

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7878 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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BHIKAJI MAGANJI THAKORE

Versus

STATE OF GUJARAT

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Appearance:

MR YN OZA for Petitioners

MR TH SOMPURA AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 04/02/97

ORAL JUDGEMENT

There have been amendments in the body of the memorandum of the petition and the prayer clauses also. Any how, when the present petition reaches for final hearing before me, learned Counsel Mr. Yatin Oza for the petitioner makes it clear that the petitioners are asking for the following principal relief:

"Para 13(BB): ... and further be pleased to direct the respondents, their agents, servants and subordinate officers to declare the land held by the petitioner no.1 at Survey No.69 of village Ghatlodia, Taluka City Ahmedabad, is of old tenure and further be pleased to direct the respondents authorities to extend all consequential benefits to the petitioner treating the said land to be old tenure."

Learned Counsel Mr. Oza also makes it clear and urges that, if the land bearing Survey No.69, situated at village Ghatlodia, Taluka City Ahmedabad, is accepted as the land of the old tenure, all other findings and proceedings running counter and contrary to the above said finding should be quashed and set aside.

The grievance made by the petitioner is, in respect of the land bearing Survey No.69, situated at Ghatlodia, Taluka City Ahmedabad. It appears that, there has been a Mutation Entry No. 809 dated June 2, 1956, saying that the above said land is a land of new tenure. The consequences which would follow from such a Mutation Entry are not unknown. The grievance made by the petitioner is that, in fact, the above said land bearing Survey No. 69 is not, and was never a new tenure land and that a stray entry somewhere in the above said effect would not be able to change the tenure of the land.

With a view to deal with the contentions coming from learned Counsel Mr. Oza for the petitioners, it shall have to be appreciated that, initially, the dispute was in respect of the nature of the tenure of two pieces of lands bearing Survey Nos. 68 and 69. Ultimately, there has been the finding in respect of the land bearing Survey No. 68 that the above said land is not a new tenure land. The dispute, therefore, centres around the nature of the tenure under which the land bearing Survey No. 69 is held. I have made a reference to Mutation Entry No. 809 dated June 2, 1956 under which the said land has been described as the land of a new tenure.

There was an endeavour on the part of the Revenue authorities, firstly, to decide the question qua the land bearing Survey No. 68. The old records have been perused and studied and, ultimately, a finding has been recorded that the said land cannot be said to be the land of a new tenure.

At the time of hearing of the petition, there was

a concentrated effort on the part of all concerned to trace the history of the land bearing Survey No. 69 with which the present petition is concerned. Learned Govt. Counsel Mr. Tushar Sompura has been duly instructed by the officers who were present along with the necessary record. Learned Govt. Counsel was able to point out "Kayam Kharada" in which there is a note made to the effect that, the land bearing Survey No. 69 would be the land of a new tenure. When the reference is made to the Kayam Kharada, in year 1926, it appears that, qua the land bearing Survey No. 69, there has been an entry saying "NA-SA", meaning thereby the land of a new tenure, i.e. "Navi Sharat". Excepting this Kayam Kharada, there is absolutely no record to warrant a conclusion that the land would be a new tenure land. It should not be overlooked that the declaration or the treatment of a piece of land as a new tenure land has got serious repercussions and the rights of the occupants are being limited in many respects. The new tenure land could not be transferred or alienated without having obtained the prior express permission of the authorities concerned. Moreover, the said land would be required to be utilised and occupied in a manner which is in consonance with the tenure under which the same has been granted. Looking to these serious repercussions which would follow from the factum of making any such entry would oblige everybody concerned to look for the orders of the circumstances in which a particular piece of land is said to be a land of a new tenure. There was, therefore, the concentrated endeavour on the part of all concerned to trace the history regarding the posting of such an entry in the revenue record. A perusal of the Government files would go to show that, despite the best efforts, the Revenue authorities were not in a position to lay their finger on any order under which this land bearing Survey No.69 could be said to be a land of a new tenure. The matter does not rest here because, the Government and the District Survey Office were trying to find out any order under which such restricted tenure could have been notified in the land revenue record. All the efforts have failed. It appears that the Deputy Secretary, Revenue Department, under a communication dated July 11, 1994 had requested the Collector, Ahmedabad to find out the origin of such an entry, but, ultimately, the matter was required to be referred to the village Talati with a request to find out any such record under which such an entry could have been justified. The Talati-cum-Secretary of the village Panchayat also, upon verification of the entire revenue record, was of the opinion that no such entry or order could be located under which the land could be said to be the land of a

new tenure. Thus, despite the best efforts, the Revenue authorities were not in a position to trace any order under which such an entry in the Kayam Kharada could have been made. In the same way, there was nothing on record which would justify the posting of the Mutation Entry No. 809 dated June 2, 1956, saying that the land bearing Survey No. 69 would be a land of a new tenure.

Learned Govt. Counsel Mr. Sompura wanted to urge before me that, there could a miscellaneous alienation in favour of the original holder and that the said alienation could have been abolished. Learned Govt. Counsel wanted to place reliance upon the provisions contained in the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. The endeavour on the part of the learned Govt. Counsel was to show that, if there has been an alienation, under this Act, the alienation shall be deemed to have been abolished and all incidents of such alienation shall be deemed to have been extinguished. But, this contention is not open to the learned Govt. Counsel because, there is absolutely no material to warrant a conclusion that there was a miscellaneous alienation in favour of anybody including the original occupant or the land holder and that later on, the said miscellaneous alienation came to be abolished under the said Act of 1955. In absence of any such material, the contention coming from learned Govt. Counsel deserves a rejection.

Therefore, looking to this scenario emerging from the Government record, it shall have to be said that there is, and there was, no basis for making such an entry on the basis on which the land bearing Survey No. 69 can be said to be the land of a new tenure.

Despite the best efforts, learned Govt. Counsel Mr. Sompura was not in a position to demonstrate anything which would oblige me to take a different view than what I am indicating herein. The conclusion, therefore, would be, that the short note in the Khayam Kharada and the subsequent Mutation Entry No. 809 dated June 2, 1956 are devoid of any strength of any orders under which the land could have been treated as the land of a new tenure. Necessary, therefore, both the said note and the entry shall have to be quashed and set aside by saying that, the land bearing Survey No. 69 cannot be treated as the land of a new tenure. I order accordingly.

The net effect would be that the said entry treating the land as a new tenure land becomes nonest and

the land in question would be a land of an old tenure. If once this position is accepted, it shall have to be said that the relief being asked for by the petitioner reproduced hereinabove shall have to be granted to the petitioner. Accordingly, the respondents, their agents, servants and subordinate officers are directed to hold and treat the land bearing Survey No. 69 of village Ghatlodia, Taluka City Ahmedabad as the land of an old tenure. The petitioner shall be entitled to the extension of all consequential and incidental benefits arising from such situation. All the proceedings and the orders which run counter to the above said orders shall have to be quashed and set aside. I order accordingly. The petition succeeds to the above said extent and the same is hereby accordingly allowed. Rule is made absolute to the above said extent, with no order as to costs.

It is not in dispute that, any entry which is being posted in the revenue record has got a life till there has been the substitution of a valid entry. This position becomes clear from the provisions contained under Sections 135-H and 135-J of the Bombay Land Revenue Code, 1879. Therefore, the respondents are hereby ordered and directed to delete the above said entry which says that the land is a new tenure land and to post the necessary entry in all the concerned revenue record saying that the land happens to be the land of old tenure. This should be done by the respondents authorities as early as possible and within a period of two months from the date of receipt of the writ of the present orders.

It should be clarified, upon a plea coming from learned Govt. Counsel Mr. Sompura that, the said entry is being quashed as indicated by me hereinabove qua the land bearing Survey No. 69 alone. In other words, this decision of mine is limited to the facts and circumstances of the present petition only.

Direct service is permitted.

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